

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

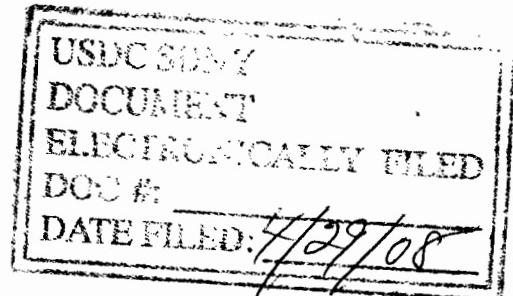
JOSEPH FERRANTE, KATHLEEN DONNATIN, )  
 BOBBY FAUL, ROBERT INGWER, )  
 ERIN VADALA and AUBURN SCALLON, )  
 individually and on behalf of all others similarly )  
 situated, )

Plaintiffs, )

vs. )

411 REST CORP., a New York Corporation )  
 d/b/a TONIC EAST and TONIC TIME )  
 SQUARE, and MARIO ARCARI, PETER )  
 ARCARI and KENNETH CAUFIELD, )  
 individually )

Defendants. )



Case No: 1:07-cv-11169-SAS

**JOINT STIPULATION AND  
ORDER TO ISSUE NOTICE**

Plaintiffs, JOSEPH FERRANTE, KATHLEEN DONNATIN, BOBBY FAUL, ROBERT INGWER, ERIN VADALA and AUBURN SCALLON, individually and on behalf of all others similarly situated, ("Plaintiffs") and Defendants 411 REST CORP, MARIO ARCARI, PETER ARCARI and KENNETH CAUFIELD ("Defendants"), stipulate to the entry of an order issuing notice of this lawsuit as follows:

1. Plaintiffs filed their First Amended Complaint on January 24, 2008. Shortly thereafter, the Parties exchanged extensive comments and revisions to arrive at an agreed-upon Notice that would provide accurate and timely notice of this lawsuit to all those similarly situated.
2. At Plaintiffs' request, the Defendant identified a list of employees who were designated, paid or employed as bartenders, wait staff or other similarly titled positions (hereinafter referred

to as Plaintiffs) within the past three (3) years, who have not already had their claims for overtime previously adjudicated, to inform them of their right to opt-in to this lawsuit.

3. The parties have attached hereto a proposed notice and opt-in consent form (Exhibits A and B).

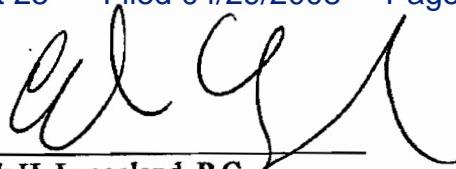
4. The Parties request that this Court enter an order:

- a. Designating this case as a Rule 216(b) collective action;
- b. Requiring Defendants to provide Plaintiffs' counsel the names, last known addresses and telephone numbers (if known) of all potential opt-in members;
- c. Requiring Defendant 411 Rest Corp. to provide Plaintiffs' counsel with the social security numbers of any potential opt-in members: (a) for whom it lacks an address or; (b) to whom Plaintiffs' attorneys have sent a notice of this collective action and received a return envelope indicating that the potential opt-in members no longer reside at the address(es) Defendant 411 Rest Corp. has provided; or (c) whose address has otherwise been documented to be outdated or incorrect. Defendant 411 Rest Corp. shall provide the social security numbers within two business days of receipt of a copy of the envelope or a written statement from plaintiffs' counsel stating the reasons why the address is believed to be incorrect. The social security numbers provided shall be used for the sole purpose of locating the best possible contact information for the potential opt-in members;
- d. Authorizing Plaintiffs' counsel to use skip tracing, if necessary to obtain the best possible contact information for the potential opt-in members;
- e. Authorizing Plaintiffs' counsel to distribute notice via first class U.S. Mail;

5. The parties agree to treat all information acquired by this stipulation as "confidential" and use it only as reasonably necessary for preparation and trial of this action, including any appeal or retrial, and shall not be used for any other purpose, including without limitation, any other litigation or proceeding or any business, competitive, or governmental purpose or function.

Dated: April 25, 2008

ERIK H. LANGELAND, P.C.



Erik H. Langeland, P.C.  
500 Fifth Avenue, Suite 1610  
New York, NY 10110  
(212) 354-6270  
(212) 898-9086 f  
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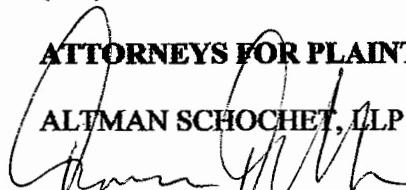
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**ATTORNEYS FOR PLAINTIFFS**

**ALTMAN SCHOCHET, LLP**



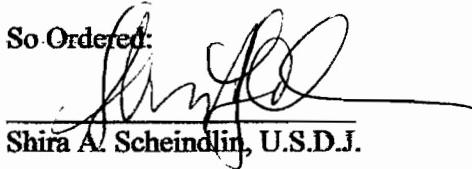
Aaron Altman  
225 Broadway 39<sup>th</sup> Floor  
New York, NY 10007  
(212) 344-8001

**ATTORNEYS FOR DEFENDANTS**

Dated: 4/25, 2008

Dated: April 28 2008

So Ordered:



Shira A. Scheindlin, U.S.D.J.

EXHIBIT A

**NOTICE OF COLLECTIVE ACTION LAWSUIT**

**Ferrante, et al v. 411 Rest. Corp., d/b/a Tonic East, et al.**  
United States District Court for the Southern District of New York  
Court File No: 1:07-cv-11169-SAS

**TO:** All present and former employees of Tonic East who were designated, paid or employed as bartenders or wait staff at any time from June 1, 2006 to the Present.

**RE:** Fair Labor Standards Act (“FLSA”) unpaid wages and overtime lawsuit filed against Tonic East.

**PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE COULD AFFECT YOUR LEGAL RIGHTS.**

**I. INTRODUCTION**

The purpose of this Notice is to inform you of the existence of a collective action lawsuit in which you may join, to advise you of how your rights may be affected by this lawsuit and to instruct you on the procedure for participating in this lawsuit if you so desire. As described more fully below, if you wish to participate in this collective action, you must timely complete, sign and return the “Opt-In Consent” form attached to this Notice.

**II. DESCRIPTION OF THE LAWSUIT**

On December 11, 2007, named Plaintiffs Joseph Ferrante, Kathleen Donnatin, Bobby Faul, Robert Ingwer, Erin Vadala and Auburn Scallon filed this lawsuit in the United States District Court for the Southern District of New York against Defendants 411 Rest Corp., d/b/a Tonic East, Mario Arcari, Peter Arcari and Kenneth Caufield (“Tonic”) on behalf of themselves and all other past and present employees who were designated, paid or employed as bartenders or wait staff within the past three (3) years. Plaintiffs allege that Tonic failed to pay regular and overtime compensation in violation of the federal Fair Labor Standards Act (“FLSA”).

Specifically, this lawsuit alleges that Tonic had and continues to have a policy of failing to pay its employees in the bartender and wait staff positions minimum wage and requiring them to work in excess of forty (40) hours per week without paying them overtime compensation as required by federal and state wage and hour laws. Plaintiffs seek to recover unpaid wages, overtime compensation, including interest, statutory penalties, reasonable attorneys’ fees and litigation costs and expenses on behalf of themselves and all similarly situated bartenders or wait staff. Tonic has denied Plaintiffs’ allegations.

### **III. COMPOSITION OF THE COLLECTIVE ACTION**

The named Plaintiffs seek to sue on behalf of themselves and also on behalf of other bartenders and wait staff. Specifically, the named Plaintiffs seek to sue on behalf of any employees who are or have been employed by Tonic as a bartender or wait staff at any time since June 1, 2006.

### **IV. YOUR RIGHT TO PARTICIPATE IN THIS SUIT**

If you fit the definition above and want to participate in this action, you must take affirmative steps to indicate your intent to join and pursue your rights under the FLSA. You may join this suit (that is, you may "opt in") by mailing, faxing or emailing the completed and signed "Opt-In Consent" form to Plaintiffs' counsel at the following address:

**Erik H. Langeland, P.C.**  
 Attn: Tonic East Class Action  
 500 Fifth Avenue  
 Suite 1610  
 New York, NY 10110  
 (212) 354-6270  
 (212) 898-9086 (Fax)  
[elangeland@langelandlaw.com](mailto:elangeland@langelandlaw.com)

**To guarantee your right to seek payment in this lawsuit, this form must be returned on or before the Court-Ordered deadline of \*\*\*\*\* , 2008, [60 days from the date of mailing]. If you fail to return the "Opt-In Consent" form to Plaintiffs' counsel in time for it to be filed with the Court on or before the above deadline date, you may not be able to participate in the lawsuit.**

### **V. EFFECT OF JOINING THIS SUIT**

If you choose to join in the suit, you will be bound by the judgment or settlement, whether it is favorable or unfavorable. If the court rules in favor of Tonic, you will be entitled to no relief if you join this action. While this suit is pending, it is possible that you may be required to respond to written questions, sit for an oral deposition and/or testify in court. Plaintiffs' counsel are being paid on a contingency fee basis, which means that if there is no recovery, there will be no attorneys' fee. If there is a judgment or settlement, Plaintiffs' counsel will receive attorneys' fees in an amount to be approved by the Court. By joining this lawsuit, you designate the named Plaintiffs as your agents to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation including the settlement thereof, the entering of an agreement with Plaintiffs' counsel concerning attorneys' fees, costs and expenses, and all other matters pertaining to this lawsuit. These decisions and agreements made and entered into by the representative Plaintiffs will be binding on you if you join this lawsuit.

## **VI. NO LEGAL EFFECT IN NOT JOINING THIS SUIT**

If you choose not to join this suit, you will not be affected by any judgment or settlement rendered in this case, whether favorable or unfavorable to Plaintiffs and the collective class. If you choose not to join in this lawsuit, you are free to file your own lawsuit. Normally, the FLSA contains a limitations period of at least two (2) years and potentially up to three (3) years for the filing of overtime claims running from the date(s) the overtime hours were actually worked. You have multiple deadlines if you worked overtime on multiple occasions. If you choose not to file an "Opt-In Consent" form, the statute of limitations will continue to run until such time as you file a lawsuit on your own behalf.

## **VII. NO RETALIATION PERMITTED**

Federal law prohibits Tonic from taking any action whatsoever against you because you have completed and submitted the "Opt-In Consent" form or otherwise exercised your rights under the Fair Labor Standards Act. This means that Tonic may not fire, demote, threaten, or in any way discriminate against you if you choose to participate. In particular, if you choose to participate, you are not required to discuss the facts or your participation in this lawsuit with Tonic, its officers, or its lawyers. If you feel that you are the victim of retaliation or undue pressure by Tonic, please immediately contact your attorneys at the numbers and addresses stated below.

## **VIII. YOUR LEGAL REPRESENTATION IF YOU JOIN**

If you choose to join this suit, your interests will be represented by the named Plaintiffs through their attorneys, as collective action counsel. Plaintiffs' collective action counsel are: Erik H. Langeland, Esq., ERIK H. LANGELAND, P.C., 500 Fifth Avenue, Suite 1610, New York, NY 10110 (212) 354-6270, Fax: (212) 898-9086, email: elangeland@langelandlaw.com; James B. Zouras, Esq. and Ryan F. Stephan, Esq. of STEPHAN ZOURAS, LLP, 205 North Michigan Ave., Suite 2560, Chicago, IL 60601, (312) 233-1550, Fax: (312) 233-1560, lawyers@stephanzouras.com; and, Jonathan Nirenberg, Esq. of RESNICK, NIRENBERG & SIEGLER, 101 Eisenhower Parkway, Suite 300, Roseland, NJ 07068, (973) 795-1240.

## **IX. FURTHER INFORMATION**

Further information about this Notice, filing an "Opt-In Consent" form, or questions concerning this lawsuit may be obtained by writing or telephoning Plaintiffs' counsel at the numbers and addresses stated above.

**THIS NOTICE HAS BEEN AUTHORIZED BY THE HONORABLE SHIRA A. SCHEINDLIN, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. PLEASE DO NOT CONTACT THE COURT WITH QUESTIONS REGARDING THIS NOTICE.**

**Dated:** \_\_\_\_\_

**Shira A. Scheindlin**  
**United States District Judge**

## EXHIBIT B

**OPT-IN CONSENT FORM**

**Ferrante, et al v. 411 Rest. Corp., d/b/a Tonic East, et al**

**Complete and Return To:**

Erik H. Langeland, P.C.  
Attn: Tonic East Class Action  
500 Fifth Avenue  
Suite 1610  
New York, NY 10110  
(212) 354-6270  
(212) 898-9086 (Fax)  
[elangeland@langelandlaw.com](mailto:elangeland@langelandlaw.com)

**CONSENT TO JOIN COLLECTIVE ACTION**

**Pursuant to Fair Labor Standards Act, 29 U.S.C. §216(b)**

1. I, \_\_\_\_\_, consent and agree to pursue my claims arising out of unpaid overtime and minimum wages as a \_\_\_\_\_ (bartender/waitress) for 411 Rest Corp., d/b/a Tonic East in connection with the above-referenced lawsuit.
2. I worked in the position of \_\_\_\_\_ (bartender/waitress) for 411 Rest Corp., d/b/a Tonic East from on or about \_\_\_\_\_ (month, year) to on or about \_\_\_\_\_ (month, year).
3. I understand this lawsuit is brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201, et. seq. I hereby consent, agree and opt-in to become a Plaintiff herein and be bound to any judgment by the Court or any settlement of this action.
4. I hereby designate the law firm of ERIK H. LANGELAND, P.C. and STEPHAN ZOURAS, LLP ("Plaintiffs' Counsel"), to represent me for all purposes of this action.
5. I also designate the Class Representatives as my agents to make decisions on my behalf concerning the method and manner of conducting this litigation including the settlement thereof, the entering of an agreement with Plaintiffs' Counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.

DATE SIGNED: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

**\*\*NOTE\*\* Statute of Limitations concerns mandate that you return this form as soon as possible to preserve your rights. (See "Notice of Proposed Class Action Lawsuit" for time deadlines).**